

<b>Notice of Allowability</b>	Application No.	Applicant(s)
	10/799,647	WYETH, MARTIN
	Examiner	Art Unit
	Milap Shah	3714

-- **The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to after final amendment filed 10/17/07.

2.  The allowed claim(s) is/are 10-12.

3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some\*    c)  None    of the:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.

(a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached  
1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.

(b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of  
Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. <input type="checkbox"/> Notice of References Cited (PTO-892)	5. <input type="checkbox"/> Notice of Informal Patent Application
2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	6. <input type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date _____.
3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____.	7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment
4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material	8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance
	9. <input type="checkbox"/> Other _____.

## DETAILED ACTION

### *EXAMINER'S AMENDMENT*

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Patch on October 29, 2007.

The Application is amended as follows:

#### In the SPECIFICATION

Title: change the title of the application to "BALL DETECTION APPARATUS FOR DETECTING WHEN A GOLF BALL IS HIT OFF A GOLF TEE".

#### In the CLAIMS

Claim 10 (IFW date 03/26/07):

- line 3: replace "detects" with --determines--.
- lines 5-6: replace "for producing" with --that produces--.

### *REASONS FOR ALLOWANCE*

The following is an examiner's statement of reasons for allowance: A thorough search of the prior art fails to disclose any reference or references, which taken alone or in combination, that teach or suggest "wherein the monitoring means varies said predetermined level in accordance with the amplitude of the first signal" in light of the other limitations of the claim.

The closest prior found is U.S. Patent No. 5,375,832 to Witler et al. (hereafter "Witler") which teaches a ball detection apparatus that detects a motion of a golf club being swung and a sound made

when the club impacts a golf ball on the tee, further, an output signal is created if these two signals coincide. The difference in that particular system is, that the first signal relates to a movement detection of the golf club rather then specifically detecting the swing speed as the claims of the instant application required. For argument sake, even given the interpretation that detecting a "movement" may be considered detecting a "swing speed", Witler further lacks the above mention specific limitation of the predetermined threshold level, for a successful or positive second signal, being varied (i.e. dynamic) based upon the amplitude or intensity of the swing speed (the first signal). This type of system appears to be more advantegous over Witler, at least in the sense that, currently a golfer using Witler's system must select which type of club they are using (via a switch) so that the system may adjust to avoid false triggers (of the output signal), whereas, the claimed invention appears to provide a dynamic measurement of the impact sound based on the swing speed for at least the purpose of making a Witler type system more efficient. The Examiner submitted an obviousness rejection in the Final Action mailed August 3, 2007 basing obviousness on automating Witler's selection of a golf club via a switch with a dynamic environment, however, since Witler at least lacks detecting specifically a swing speed, it appears there would be no motivation in the cited art to modify multiple portions of the Witler invention to arrive at the Applicant's claimed invention. Applicant's response to said rejection is persuasive, thus, claims 10-12 are allowed for at least this and the other reasons given above.

As additional comments: The Examiner has relied upon functional language as limiting to the claimed invention, such that any "for" language and wherein clauses in an apparatus claim may be considered functional, however, in the instant application they would be required for the invention to operate properly, thus are essentially limiting to the structure of the claimed invention. The Examiner's amendment further adds to positively reciting functional language. The Examiner believes there are no 35 U.S.C. 101 issues, as the claimed invention is within one of the recognized statutory classes and appears to

produce a useful, concrete, and tangible result, wherein the result is the output signal that is useful, concrete, and at least appreciable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milap Shah whose telephone number is (571) 272-1723. The examiner can normally be reached on M-F: 9:30AM-6:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robert Pezzuto  
Supervisory Patent Examiner  
Art Unit 3714

/MBS/